

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

DIMITRI Z. STORM,

Plaintiff,

v.

NEWSOM, *et al.*,

Defendants.

Case No. 1:24-cv-00236-KES-BAM (PC)

ORDER VACATING FINDINGS AND  
RECOMMENDATIONS TO DISMISS  
ACTION  
(ECF No. 12)

ORDER CONSTRUING PLAINTIFF'S  
OBJECTIONS TO FINDINGS AND  
RECOMMENDATIONS AS MOTION FOR  
EXTENSION OF TIME TO FILE FIRST  
AMENDED COMPLAINT  
(ECF No. 13)

ORDER GRANTING IN PART PLAINTIFF'S  
MOTION FOR EXTENSION OF TIME TO  
FILE FIRST AMENDED COMPLAINT  
(ECF No. 13)

**THIRTY (30) DAY DEADLINE**

Plaintiff Dimitri Z. Storm ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On August 22, 2024, the Court screened the complaint and found that it failed to comply with Federal Rule of Civil Procedure 8 and failed to state a cognizable claim for relief. (ECF No. 9.) The Court issued a screening order granting Plaintiff leave to file a first amended complaint or a notice of voluntary dismissal within thirty (30) days. (*Id.*) The Court expressly warned Plaintiff that the failure to comply with the Court's order would result in a recommendation for

1 dismissal of this action, with prejudice. (*Id.* at 8.) On October 10, 2024, following Plaintiff's  
2 failure to file an amended complaint, the Court issued findings and recommendations to dismiss  
3 this action, with prejudice, for failure to state a claim, failure to obey a court order, and failure to  
4 prosecute. (ECF No. 12.) Plaintiff was directed to file any objections to the findings and  
5 recommendations within fourteen (14) days. (*Id.*)

6 Currently before the Court are Plaintiff's objections to the findings and recommendations,  
7 filed October 29, 2024. (ECF No. 13.) In his objections, Plaintiff states that he already sent a  
8 first amended complaint to the Court, and if it was not received it should be no surprise given the  
9 escalation of retaliation and criminal conduct of the staff at Plaintiff's institution in destroying  
10 Plaintiff's mail and property. While Plaintiff addresses the findings that his complaint failed to  
11 state a claim, Plaintiff also requests a 60-day or 45-day extension of time to file another amended  
12 complaint. (*Id.* at 4.) Plaintiff states that he is trying to prosecute this case and proceed in  
13 litigation. (*Id.*)

14 Having considered Plaintiff's objections, the Court finds it appropriate to vacate the  
15 pending findings and recommendations. Plaintiff's objections are construed as a motion for an  
16 extension of time to file a first amended complaint, and the motion is granted in part. In light of  
17 Plaintiff's assertion that he previously prepared and submitted a first amended complaint, the  
18 Court finds that an extension of thirty days, rather than sixty or forty-five, is appropriate under the  
19 circumstances.

20 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what  
21 each named defendant did that led to the deprivation of Plaintiff's constitutional rights, *Iqbal*, 556  
22 U.S. at 678-79. Although accepted as true, the "[f]actual allegations must be [sufficient] to raise  
23 a right to relief above the speculative level . . . ." *Twombly*, 550 U.S. at 555 (citations omitted).  
24 Any amended complaint shall be **limited to 25 pages in length**, including exhibits.

25 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated  
26 claims in his first amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no  
27 "buckshot" complaints).

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1 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.  
2 *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff's amended  
3 complaint must be "complete in itself without reference to the prior or superseded pleading."  
4 Local Rule 220.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The findings and recommendations issued on October 10, 2024, (ECF No. 12), are  
7 VACATED;
- 8 2. Plaintiff's October 29, 2024 objections, (ECF No. 13), are CONSTRUED as a motion for  
9 extension of time to file a first amended complaint;
- 10 3. Plaintiff's motion for extension of time to file a first amended complaint, (ECF No. 13), is  
11 GRANTED IN PART;
- 12 4. The Clerk's Office shall send Plaintiff a complaint form;
- 13 5. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a first  
14 amended complaint curing the deficiencies identified by the Court's August 22, 2024  
15 screening order (or file a notice of voluntary dismissal);
- 16 6. Any amended complaint shall be **limited to 25 pages in length**, including exhibits; and  
17 7. **If Plaintiff fails to file a first amended complaint in compliance with this order, this**  
18 **action will be dismissed, with prejudice, for failure to obey a court order and failure**  
19 **to state a claim.**

20  
21 IT IS SO ORDERED.

22 Dated: October 30, 2024

23 /s/ Barbara A. McAuliffe  
24 UNITED STATES MAGISTRATE JUDGE  
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